U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 0 1 2015

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, ("the director") denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her U.S. citizen spouse.

The director denied the petition because the evidence failed to establish that the petitioner resided with her husband and married him in good faith. On appeal, the petitioner submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

> (v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
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> (ix) *Good faith marriage*. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

> (i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
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> * * *
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> (iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . ., deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.
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> (vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Pertinent Facts and Procedural History

The petitioner is a citizen of Kenya who last entered the United States as a student on May 20, 2000. The petitioner married J-H-[1], a U.S. citizen, on 2007, in Minnesota. The petitioner filed the instant Form I-360 self-petition on February 19, 2013. The director subsequently issued a request for additional evidence (RFE) of, among other things, the petitioner's residence with J-H- and her good faith marriage to him. The petitioner timely responded with further evidence which the director found insufficient to establish her eligibility. The director denied the petition for failure to establish the requisite joint residence and good-faith entry into the marriage. The petitioner timely appealed.

We review these proceedings *de novo*. On appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Joint Residence

The director determined that the record failed to establish that the petitioner resided with J-H- during their marriage, and we affirm this finding on appeal. The record before the director included the petitioner's two affidavits, affidavits from friends, audio and transcribed voice mails, a police report and documentary evidence. The petitioner claimed that she and J-H- shared three residences during their marriage from 2007 until August 2012, and that the last address they shared was

[1] Name withheld to protect the individual's identity.

Minnesota ( ). The petitioner does not submit additional evidence on appeal. For the reasons noted below, we agree with the director that the record does not establish that the petitioner and J-H- resided together during their marriage.

The Act defines residence as a person's general abode, which means the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

In the record below, the petitioner stated that she first resided with J-H- at his home on Minnesota (') for the first two months of their marriage, and that she and J-H- moved to the home she owned at Minnesota ( ) in March 2008.[2] The petitioner indicated that the children were cared for by family friends, , when she lived at the house. The petitioner's first affidavit to the effect that she left her children at the home with in January and February, 2008 is inconsistent with the statement of who indicated that he entered the United States as a lawful permanent resident in November 2010,[3] and moved into the home at that time. In the petitioner's second affidavit, she changed her testimony with respect to the care of her children during the first two months of her marriage to state that they were cared for by her oldest son, her father, and an international student. As no evidence of record resolves these inconsistencies, the petitioner's assertion that she lived with J-H- at the house has minimal probative value.

Nor does the record establish the petitioner's claimed joint residence with J-H- at the home. Although the record reflects that the petitioner purchased the home in 2006, and moved from in June 2013, the record does not establish that the home was J-H-'s principal, actual dwelling place during their marriage, as defined at section 101(a)(33) of the Act. The petitioner indicated that she and J-H- lived at the home together with her three children, and sometimes J-H's daughter from a previous marriage, C-H-.[4] Other than the abuse, and logistical issues with the children arising after J-H- rented the apartment, the petitioner's affidavits do not describe any residential routines she shared with J-H- in any of the three claimed residences.

In the record before the director the petitioner claimed that she and J-H- lived together at the apartment that J-H- leased in May 2009 in both of their names. The evidence of record demonstrates, however, that J-H- leased the apartment and established the apartment as his actual dwelling place. The petitioner stated that J-H- felt that they needed another place, as the

[2] The record does not establish that J-H- was forced out of the house in March, 2008. The petitioner explained in her first affidavit that when she married J-H-, the house was "headed into" foreclosure; and in her second affidavit, that the house was foreclosed in 2007. Public records indicate that purchased the house in November 2008.

[3] Mr. submitted a copy of his permanent resident card indicating that he was a permanent resident of the United States since December 1, 2010.

[4] Name withheld to protect the individual's identity. The record reflects that C-H- stayed with the petitioner on some weekends.

home was under the threat of foreclosure. This explanation does not consider the petitioner's admission that the entire family would not fit in the apartment. The lease agreements dated 2009 – 2012, contain both the petitioner's and J-H's signatures, but the petitioner's names were forged on the lease agreements.[5] During an investigation by immigration officials, the petitioner could not accurately recall the address of the apartment.

The petitioner indicated in her affidavits that she and J-H- spent most of their weeknights at the apartment, and most weekends at with the children. She also explained that J-H- spent most of his time at the apartment, and after November 2010, all of his time. The affidavits of the petitioner, and described an arrangement where the petitioner maintained her residence at and that J-H- and his daughter spent some weekends at Spending weekends and/or weeknights in a particular location does not establish that home as a principal, actual dwelling place. While correspondence addressed to J-H- at indicates that he received correspondence at the address for a brief period, such mail did not begin until 2010, after J-H- rented the apartment.[6]

The record before the director also contained an audio recording and certified transcripts of voice mail messages from J-H- to the petitioner from 2011-2014, in which J-H- expressed, in part, the wish to come get his belongings from the petitioner. The police incident report dated in January 2013 indicated that the petitioner reported that J-H- broke a pane of glass in the garage "to get items out of the garage." While the voice mails and the police report indicate that J-H- had some possessions at the home, the evidence does not establish that the home was his place of general abode during their marriage.

The record contains no evidence demonstrating that the petitioner ever relocated from her own principal, actual dwelling place to either the apartment or the home and that J-H- resided with the petitioner in When viewed in the aggregate, the relevant evidence does not show that the petitioner resided with her husband during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The record before the director included two affidavits from the petitioner, documentation of joint tax filings, insurance policies and bank accounts, and affidavits from friends. The director determined that

[5] In response to the director's RFE, the petitioner admitted that she did not sign any of the leases.

[6] A 2010 Form W-2 Wage and Tax Statement issued to J-H- by lists the house address; a 2010 earnings statement and Form W-2 from to J-H- indicates his address as The record also includes correspondence addressed to J-H- from (Form 1099 for 2008, deposit receipts dated January 2011); and from the Minnesota Register of Actions for traffic citations (2011 and 2012). The remaining documentation addressed to J-H- individually is dated after the petitioner's claimed end date of her residence with J-H-, August 2012. The petitioner stated that she maintained her address in throughout the marriage.

the petitioner did not marry J-H- in good faith, and the petitioner does not overcome this portion of the director's decision on appeal.

The petitioner submitted copies of federal tax returns, a state tax credit, a health insurance claim, joint bank account records, utility receipts and an audio recording of voice mail messages from the petitioner's husband and his daughter.[7] Copies of 2008 and 2009 federal income tax returns were marked as married filing jointly. A medical insurance receipt dated in January 2011 indicated that the petitioner provided health insurance for J-H- at the home address. A 2010 Notice of Credit from the Minnesota Department of Revenue addressed jointly to the petitioner and J-H- applied a joint credit of $1029 to prior tax debt and recapture of child support payments. The joint prime checking account statement dated December 31, 2008 reflected total liabilities of $61,737.53, and withdrawals and deposits of approximately $2200. statements dated September and October 2010 reflected a few deposits in each of those months of over $1000; other months including December 2010, January 2011, and July through November 2011 reflected total monthly deposits from $50.92 to $211.03, and few transactions. While these documents reflect that the petitioner and J-H- briefly shared two insurance policies, and that the State of Minnesota considered the couple to be married in 2010, the documents do not establish the petitioner's good-faith marriage to J-H-. The federal tax returns are neither signed nor stamped as filed. There are no loan documents reflecting that the loan of more than $61,000 was a joint debt. The account statement and the statements do not reflect regular and recurring deposits and withdrawals by both the petitioner and J-H- for more than a few months, and are not probative of the petitioner's good faith marriage.

Despite these deficiencies, traditional forms of joint documentation are not required to demonstrate a self-petitioner's good faith marriage. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences." 8 C.F.R. § 204.2(c)(2)(vii). The petitioner recounted in her first affidavit that she met her husband at the paint store and when he came to paint her home they became romantically involved. She stated that her former husband had disappeared back to Kenya, and she wanted the stability of a marriage for the sake of her children. She described J-H- as a likeable family man who cared for his daughter and understood her family responsibilities. The petitioner described a wedding ceremony at the with 15 guests, and shared experiences such as family outings and trips, birthdays, extended family gatherings, and a shared vision for the future.[8] The petitioner did not provide probative details about their courtship, wedding ceremony, joint residence or shared experiences, apart from the abuse.

who lived at the home from November 2010 until July 2012, stated that the petitioner and J-H- worked outside the home, the family ate dinner together, and shortly after he moved into the residence, J-H- stopped staying at the house. stated that she was

[7] The director determined, and we agree, that the documents dated after the claimed separation date of August 2012 were not probative of the petitioner's good faith intentions, and such documents will not be analyzed in this decision.

[8] In her discussion of the abuse, the petitioner indicated that she became pregnant with J-H-'s child and terminated the pregnancy in February or March 2008. The record contains no other indication of the pregnancy.

the maid of honor at the wedding, and described taking her children to the home and to other gatherings with the petitioner, J-H- and their families. , a friend of the petitioner, stated that she and her children joined the petitioner, J-H-, and their children apple picking, swimming, and at special occasions and family dinners. Ms. observed the petitioner's happiness at being married to J-H-. a friend of the petitioner, described visiting the petitioner at the apartment at a birthday party for C-H-, and at the home when J-H was working and the petitioner was taking care of C-H-. These statements contain generalized accounts of the affiants' observations of the petitioner and J-H- and are insufficient to demonstrate the petitioner's good faith intent when entering into her marriage. The petitioner submitted transcripts of recorded telephone voice mails showing that the petitioner, J-H- and C-H-, shared some occasions, but do not establish the petitioner's good faith marital intentions.

In her decision the director noted unresolved inconsistencies in the record. In the RFE the director requested the petitioner to explain why an investigation showed that she did not list J-H- as an emergency point of contact on her children's school records. In response to the RFE, the petitioner stated that she did not trust her children with J-H-. The director indicated that at an on-site investigation, the petitioner told the investigator an incorrect address for the apartment, and the wrong grade level for C-H-, her stepdaughter. She replied that she was nervous during the investigation. The director also asked the petitioner to explain her testimony at the February 2011 interview indicating that she and J-H- resided together at the residence, which was inconsistent with the record indicating that J-H- rented the apartment in May 2009 and that the petitioner and J-H- resided primarily at the apartment. In response to the RFE, the petitioner stated that at the interview in February 2011 she should have provided more details of their living arrangements at the time.

On appeal, the petitioner submits a brief indicating that of the nine types of evidence of good faith marriage listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), the petitioner submitted five of them, including employment records, utility receipts, insurance policies, rental records, and affidavits from three people who had personal knowledge of the couple's relationship. The employment records consist of a 2010 Internal Revenue Service Form W-2 mailed from J-H-'s employer, Interlachen, to the address. As noted previously, the rental records for the apartment and the affidavits of the witnesses have limited probative value to establish the petitioner's good faith marriage. None of these documents reflects on the good faith intentions of the petitioner at the time of her marriage to J-H-.

The petitioner does not submit additional evidence on appeal and fails to address why in December 2011 she did not know the name of the apartment where she claims to have resided from May 2009 until August 2012, or her stepdaughter's grade level after three years of marriage. She does not explain why she told immigration officials that she and J-H- lived in in February 2011, at a time when they lived at the apartment. The petitioner's statement that she left her children with in the beginning of 2008, when Mr. did not arrive in the United States until November 2010, and the other unresolved inconsistencies, cast doubt on the probative value of the petitioner's claim to have married J-H- in good faith. The preponderance of the relevant evidence submitted below and the petitioner's brief on appeal do not demonstrate that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii) of the Act.

Conclusion

On appeal the petitioner does not demonstrate that she resided with J-H- during their marriage, and that she married him in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. As such, the petitioner is not eligible for the relief requested.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). On appeal, the petitioner has not met this burden.

ORDER: The appeal is dismissed.